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	Buyer Name Kathryn Lyles (Fin-DMPS)		

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The RFP, S-00313664, and any Addenda thereto shall become part of this Catalog Master Agreement and is incorporated into the contract by reference.

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Section 10--Administrative Overview

10.000--Purpose

It is the purpose of this contract to provide affordable, portable, consistent, reliable and secure wireless voice communications for all state and local government agencies. It is also the goal to incorporate data services as appropriate and available through this vehicle.

Services to support this initiative include but are not limited to:

- Seamless Statewide Coverage
- Simplified Pricing Model
- Formalized Account Management Process (Single Point of Contact)
- Electronic Billing and Reporting
- Expanded Network Services

Section 20—Present System Summary

Section 20.000-- Executive Summary

The Commonwealth of Kentucky is not a single enterprise purchaser of wireless communication goods and services. Acquisition is done by many agencies each trying to support their unique missions. However, there are certain common issues and needs, some of them government unique.

In laying out these requirements, commercial wireless communications (herein referred to as wireless) is envisioned as becoming an integral part of the Government's telecommunications infrastructure. It is seen not as a special application interfacing with wireline networks, but as becoming an integral part of future state, local and education networks. Wireless communications will be so integral to the telecommunications infrastructure that, ultimately, information systems designers will no longer need to concern themselves with whether end users are on wired local area networks (LANs) or unwired client devices.

One of the unique qualities of government is its sheer size and scope, including its thousands of employees spread throughout the Commonwealth, some required to travel throughout the state, others in fixed geographic locations consisting of a few counties. State and local workers perform duties assigned according to their individual agency's mission, including social work, inspection, education, transportation and public safety.

Today many of these workers are tethered to wired workstations in government owned or leased office space. Tomorrow most will be wireless, untethered, and operate in new settings in addition to the conventional spaces they occupy now. The impact will be both

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improved services and more efficient operation.

The government's future use of wireless will be inextricably tied to the cost of these services and to the value it brings to our missions. Replacing or modernizing the government's current inventory can only be accomplished if the value is clear and the acquisition, maintenance, subscription and operational costs can be justified.

Section 20.100-- Background

Since 1993, the Commonwealth's state agencies' usage of cellular voice services has grown from approximately 1000 to 4000 units. The majority of the usage is within the cabinets of Justice, Transportation, Natural Resources & Environmental Protection, and Families & Children. Almost every agency within state government has a need for cellular service at some level. All ordering and billing processes are handled by the individual agencies with some coordination with the Governor's Office for Technology (GOT). No centralized repository of information exists at this time, however a "minor object code" report has been created within the state accounting system and generated monthly. The fiscal year 99-00 report indicates that more than two (2) million dollars was spent on cellular service and equipment by state agencies.

The demand for wireless communication in the Commonwealth has historically encompassed statewide and regional radio communication for agencies such as the Kentucky State Police, Kentucky Educational Television, Transportation Cabinet, Division of Disaster and Emergency Services, Fish and Wildlife, and the Cabinet for Natural Resources and Environmental Protection.

Cellular voice had been used primarily as an adjunct to the radio system. Cellular coverage continues to play a more important role as coverage is expanded and pricing becomes more affordable. Cellular represents the only viable option for remote access for management and field personnel within agencies having limited or no two-way radio communications.

END OF SECTION 20

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Section 30--Scope of Work

Section 30.000-- DEFINITIONS

For the purpose of this Catalog Master Agreement, the following definitions shall apply:

Agency Coordinator: The individual assigned by each agency to coordinate all related telecommunications matters for the agency.

Approval: When used in the context of the phrase, "or approved equal", the term shall mean an item not identical to that specified but accepted by the Issuing Office in writing after review of justification data supplied by the vendor as being equally efficient for the purpose.

Business Day: Any day that the Commonwealth of Kentucky conducts normal business.

CDMA: Code Division Multiple Access. Technology used by carrier to transport voice and data services. Can be either in 800 MHz or 1900 MHz frequency.

CMRS Board: The CMRS Board is charged with administering the CMRS fund for the purpose of implementing wireless emergency 911 service through out Kentucky in accordance with State and Federal Legislation and Regulation.

Contract: The written agreement executed by the Commonwealth and the selected vendor(s) to provide and install the materials and equipment necessary to provide the system and/or services in accordance with its proposal and the provisions of this Request for Proposal.

Contractor: The vendor selected by the Commonwealth who enters into a contract with the Department of General Services to provide required wireless equipment and services.

Cost: Cost and price are defined as meaning the same dollar amount including any discounts. The price of the vendor is the cost to the user agencies.

COW: "Cell On Wheels" is a portable tower used in emergency or special situations.

DMPS: Division of Material and Procurement Services

ESMR: Enhanced Specialized Mobile Radio. Technology deployed by carrier to transport voice and data services. Also has direct-connect radio capability. 800 MHz license.

Footprint: Build-out of services within licensed area

GOT: Governor's Office for Technology

GSM: Global System for Mobile. Technology deployed by carrier to transport voice and data services. European standard. 1900 MHz license.

Issuing Office: The governmental entity named in section 10.070 of this RFP.

Issuing Officer: The individual named in section 10.070 of this RFP.

MOU: Minutes of Usage - billable airtime

Option/Optional: Option or optional equipment and/or systems shall be defined as that which is offered by the vendor in addition to a fully compliant base proposal.

Pre-Install prices: Those costs accrued while a system is being installed and before

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acceptance of the system by the Commonwealth.

Post-Install prices: Those costs for additions and/or changes to the system after acceptance of the system by the Commonwealth

Prime Contractor: The vendor(s) selected by the Issuing Office to receive award of the contract(s) and who (as the contractor) will be the sole point of interface to the Commonwealth and have the sole responsibility for timely provision of all goods and services procured through this contract.

Propagation map: Map showing actual radio frequency availability defined as in-building, street and mobile coverage

Provide: Means supply and install, unless otherwise stated.

Response: Vendor returning call advising of a malfunction and providing satisfactory resolution of the problem.

Seamless: Without awkward transition

Subcontractor: A person or firm contracting with the prime contractor to perform part of the contract.

TDMA: Time Division Multiple Access. Technology utilized by vendor to transport voice and messaging services.

Ubiquitous: Support for wide coverage areas. Ubiquitous service requirements include geography, compatibility, and service provisioning. Each of these must be present to support mobile users of one or more air interface (radio) technologies.

User Agency: An agency, which is the recipient and user of the goods and services, identified in the Request for Proposal.

Working Hours: Working hours for the contract resulting from this RFP are 8:00 A.M. to 4:30 P.M., Monday through Friday, eastern and central time, excluding Commonwealth holidays.

Section 30.100—Technical Requirements

Such services are to be provided within the currently available technologies and shall be enhanced and expanded as technologies improve and new technologies are developed. It is further anticipated that the contractor will provide a single point of contact (SPOC) for provision of equipment, service, billing and dispute resolution. The solutions presented shall be as user-friendly as the technology allows and will not require multiple pieces of equipment for comparable ubiquitous wireless service.

Section 30.200—Wireless Coverage

The Commonwealth understands that no single wireless provider has complete coverage in all 120 counties. However, as the Commonwealth requires ubiquitous coverage, we may at our discretion contract with more than one carrier to achieve this end.

These government user requirements for wireless products and services are generally

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characterized as Digital, Ubiquitous, Interoperable, Transparent, and Secure (DUIITS) as defined below.

- **Digital** - service performance supported by high performance digital communication link protocols. Such protocols enable better radio link communication performance and the addition of higher layer services to support data, security, and enhanced network features.
- **Ubiquitous** - support for wide coverage areas. Ubiquitous service requirements include geography, compatibility, and service provisioning. Each of these must be present to support mobile users of one or more air interface (radio) technologies.
- **Interoperable** - the direct compatibility between user and service infrastructure as well as extending features across the service provider and local network domains. Interoperability can include multi-mode operation and/or service interworking.
- **Transparent** - the maintenance of service features, performance, and operation to the user across service and network boundaries.
- **Secure** - the suite of information security features provided by the network and/or available in the user terminal. Security features must include the traditional confidentiality, authentication, integrity, availability, and accountability protocols.

These features are also common to the needs of the large business communities, but the scope of government needs is often broader and the impact more urgent. Government users will require voice, data, fax, messaging, imagery services, e-mail, file transfer, Internet access, Intranet access, remote computing and more for diverse applications. Security features are required in most applications. During periods of natural disasters and crisis it is especially important that resources be available and readily configurable statewide.

It is the intention of this document to obtain services for ubiquitous wireless coverage within the boundaries of the Commonwealth as well as best possible coverage on a nationwide basis.

Section 30.300—Equipment and Services

The contractor(s) will be required to assume responsibilities for delivery, installation, and maintenance of all equipment, systems, subsystems, and support services offered whether or not they are manufactured or produced by the contractor. Further, the Commonwealth will consider the contractor(s) to be the sole point of contact with regard to contractual matters.

The Commonwealth of Kentucky requires the equipment and services for the following:

- 3 watt Analog Wireless Telephone Equipment and Service

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- Digital Wireless Telephone Equipment and Service
- Digital Wireless Data Equipment and Service
- Miscellaneous voice and data enhancement options such as:
 - Voice Mail
 - Internet numeric and text messaging
 - Caller ID
 - Missed Call Identification
 - Web access
- Emergency Response equipment and service

The Agencies of the Commonwealth desire to purchase with a trade-in program or lease with the option to buy, wireless communications equipment utilizing a "Good, Better and Best" tiering methodology. The vender must provide equipment throughout the Commonwealth of Kentucky. The following list details equipment requested. List under each category the make, model number, technology used, features of all equipment offered in this response.

1. Transportable (for use in extreme rural and emergency situations)
2. Portable Phones- specify digital technology and frequency
 - a. Dual Mode (Analog and Digital)
 - b. Tri Mode (Analog / 800 MHz / 1.9 MHz)
3. Emergency Service Equipment
 - a. Satellite Equipment
 - b. Cell on Wheels
 - c. Instant activation and dispensing of Cell Equipment in response to an emergency situation.
4. Miscellaneous Equipment and Accessories (as a minimum)
 - a. Magnetic Antennas
 - b. Hard Mount Antennas
 - c. Wattage Booster Kits
 - d. Mounted in-car kits
 - e. Adapter Cables
 - f. Chargers and Charging Cables
 - g. Carrying cases / clips
 - h. Headsets
 - i. Spare batteries

Section 30.400—Future Offerings

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1. The Commonwealth must be assured that future developments in technology and equipment will be made available through this contract to user agencies.

Section 30.500--Billing

The Commonwealth currently receives paper invoices from multiple vendors. It is our intention that in the future we will receive a composite billing of all agency use, pay it within 30 working days after receipt utilizing standard EDI (electronic data interchange) processes and procedures. This process is currently in use for Commonwealth wire-line services. This result is prompt payment to the vendor and increased value to the Commonwealth. It is the intent to provide consolidation of billing for services rendered to the extent possible.

Section 30.600--Training

The selected vendor must provide regional training sessions at the start of the contract. Additional training sessions will be scheduled by the using agencies at mutually acceptable times and locations. Training sessions will be tailored to the agency needs and will cover all equipment in use and services available to the participants in each class. Training will include four concepts:

- Training on the use of the hardware (wireless devices) purchased/leased;
- Training on the use of software and features offered by your proposal;
- Training on appropriate use of wireless services including tips on minimizing bills, etiquette, and the safe use of mobile equipment;
- Training on the use of the database and billing details provided as part of the proposal.

Thought should be given to the production of audio and/or video electronic media training in lieu of live training, provided a mechanism is readily available to deal with questions or issues brought up by participants.

Section 30.700—Management Meetings and Reports

The contractor shall conduct quarterly program management review meetings in the form of a verbal presentation to be held at a GOT designated location on behalf of all contracted agencies.

The contractor shall conduct agency-specific meetings as requested by the agency coordinators.

The contractor shall furnish cumulative quarterly management reports, which shall be furnished electronically to the Wireless Communications Section, Communications

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Division, Governor's Office for Technology. This report will be made available to all participating agencies.

One (1) management report will consist of a summary of supplied equipment and services provided for all qualified agencies under contract with the contractor. The summary is to include, at a minimum, agency name, agency address, equipment supplied, service supplied, features supplied, activation date, and total cost.

The second (2nd) report, will be designed by the contractor and will be a repair and maintenance management report. The report will be associated with the plan for dispatch center logging, tracking, and updating Commonwealth service calls as proposed in the response. The report not only will be used by the contractor, but also will be provided to the GOT Communications Division.

The Communications Division requires that the management reports be a minimum of one (1) hard paper copy with the associated data on a CD. Media format (word processing) Microsoft Word, (spreadsheet) Microsoft Excel, or (database) Microsoft Access.

Upon request by an individual agency, responder must provide a custom designed report for any agency utilizing more than 50 wireless phones or wireless services. In any event, the responder will be required to implement these custom designs within 6 months of the contract execution.

END OF SECTION 30

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Section 40--Terms and Conditions of a Contract with the Commonwealth of Kentucky

Section 40.000--Beginning of Work

The Contractor shall not commence any billable work until a valid Contract has been executed as discussed in Section 40.010.

Section 40.010--Contract Components and Order of Precedence

The Commonwealth's acceptance of the Contractor's offer in response to the Solicitation, indicated by the issuance of a Contract Award by the Division of Material and Procurement Services, shall create a valid Contract between the Parties consisting of the following:

1. Any written Agreement between the Parties;
2. Any Addenda to the Solicitation;
3. The Solicitation and all attachments thereto, including Section 40--Terms and Conditions of a Contract with the Commonwealth of Kentucky;
4. General Conditions contained in 200 KAR 5:021 and Division of Material and Procurement Services' BO110-10-00;
5. Any Best and Final Offer
6. Any clarifications concerning the Contractor's proposal in response to the Solicitation.
7. The Contractor's proposal in response to the Solicitation;

In the event of any conflict between or among the provisions contained in the Contract, the order of precedence shall be as enumerated above.

Section 40.015--Final Agreement

The Contract represents the entire agreement between the parties with respect to the subject matter hereof. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof shall be of no effect upon this Contract.

Section 40.016--Agencies to Be Served

This contract shall be for use by the following agencies of the Commonwealth of Kentucky:

All State Agencies

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No shipments shall be made except upon receipt by vendor of an official Delivery Order from a using agency.

Section 40.017--Political Subdivisions

Under Kentucky Statutes, political subdivisions of this State including cities, counties and school districts may participate in All State Agency Catalog Master Agreements to the same extent as agencies of the Commonwealth.

Section 40.020--Waiver

No covenant, condition, duty, obligation, or undertaking contained in or made a part of the Contract will be waived except by the written agreement of the parties. The granting of a forbearance or indulgence, regardless of the form, by either party shall not constitute a waiver of the above-referenced covenant, condition, duty, obligation, or undertaking to be kept by the specified party. Until the specified party has satisfied or completely performed said covenants, conditions, duties, obligations, and undertakings, the other party shall have the right to invoke any remedy available under law or equity, providing the party has not granted or agreed to a forbearance or indulgence.

Any consent by any party to, or waiver of, a failure by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent failure.

Section 40.025--Contract Variations

If any provision of this Contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both the Commonwealth and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

Section 40.030--Changes and Modifications to the Contract

Pursuant to KRS 45A.210(1) and 200 KAR 5:311:

The contract shall be on the basis of a firm fixed unit price for the elements listed. No modification or change of any provision in this Contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Contractor and the Commonwealth, and incorporated as a written amendment to the Contract and processed through the Division of Material and Procurement Services and approved by the Finance and Administration Cabinet prior to the effective date of such

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modification or change pursuant to KRS 45A.210(1) and 200 KAR 5:311. Memorandum of understanding, written clarification, and/or correspondence shall not be construed as amendments to the Contract.

If the Contractor finds at any time that existing conditions made modification of the Contract necessary, it shall promptly report such matters to the Commonwealth Buyer for consideration and decision.

The prices established at contract award shall establish the maximum price to be paid by qualified agencies for wireless services and equipment. Whenever there is a general decline in price to any segment of the trade in Kentucky, which is lower than the contract price, it shall be the responsibility of the contractor to immediately notify the Issuing Office of price decreases to be incorporated into the contract.

The contractor and Commonwealth reserve the right to re-negotiate the prices for subsequent renewal periods.

Nothing in the contract(s) shall deprive a qualified agency from negotiating with vendors, or vendors offering, prices lower than the price established by the contract(s) when it is deemed in the best interest of the Commonwealth. Any changes must be notated in the reporting process.

The Commonwealth recognizes the rapid advancement of technology and with that advancement new equipment and related services may be added to the contract(s) by the Issuing Office. It shall be the responsibility of the successful contractor(s) to furnish the Issuing Office with information on new technology, as it becomes available. The Commonwealth may choose, by mutual agreement by all parties involved, to add such technologies, services and equipment to the contract. No additions shall be made without the approval of the DMPS through issuance of an advice of change to the contract.

Section 40.035--Changes in Scope

The Commonwealth may, at any time by written order, make changes within the general scope of the Contract. No changes in scope are to be conducted except at the approval of the Commonwealth through the process described in **Section 40.030--Changes and Modifications to the Contract**.

Section 40.040--Term of Contract

The initial term of the Contract shall be for a period of two years from the effective date of the Award of Contract.

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Section 40.045--Renewal of Contract

This Contract may be renewed at the completion of the initial Contract period for four (4) additional one (1) year periods upon the mutual agreement of the Parties. The Commonwealth also reserves the right to extend the Contract(s) in three (3) month increments to prevent a lapse in contract coverage. Such mutual agreement shall take the form of an addendum to the Contract under **Section 40.030--Changes and Modifications to the Contract.**

The Commonwealth reserves the right not to exercise any or all renewal options. The Commonwealth reserves the right to extend the contract for a period less than the length of the above-referenced renewal period if such an extension is determined by the Commonwealth Buyer to be in the best interest of the Commonwealth.

Section 40.050--Contract Usage

The contractual agreement with the vendor will in no way obligate the Commonwealth of Kentucky to purchase any services or equipment under this contract. The Commonwealth agrees, in entering into any contract, to purchase only such services in such quantities as necessary to meet the actual requirements as determined by the Commonwealth. The services purchased in any particular county or zone will depend upon the Commonwealth's requirements in that county or zone.

Section 40.055--Multiyear Contracts

If this Contract is for a term that extends beyond the end of the biennium in which the Contract was made, payment and performance obligations for succeeding fiscal years are subject to the availability of funds therefor. When funds are not appropriated or otherwise made available to support continuation of performance of the Contract beyond the biennium, the Contract for such subsequent year(s) may be canceled and the Contractor shall be reimbursed in accordance with **Section 40.310--Termination for Unavailability of Funds.**

Section 40.060--Assurances Before Breach

If deliverables due under the Contract are not to the satisfaction of the Commonwealth Buyer, the Contractor shall be prepared to deliver assurances in the form of additional Contractor resources to the Commonwealth Buyer and to demonstrate that other major schedules will not be affected. The quantity and quality of such additional resources is at the discretion of the Commonwealth and failure to comply shall be subject to the provisions of termination for default.

Section 40.065--Assignment

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The Contractor shall not assign the Contract in whole or in part or any payment arising therefrom without the prior written consent of the Commonwealth Buyer. Any purported assignment is void.

Section 40.070--Notices

All programmatic communications are to be made to the Agency Contact Person listed below:

The GOT Project Manager for this contract will be:

Mary Vaughn, Wireless Communications Coordinator
Division of Communications Services
Office of Infrastructure Services
101 Cold Harbor
Frankfort, KY 40601
Phone: 502-564-5273
Email: mary.vaughn@mail.state.ky.us

The GOT Administrative Manager for contract administration will be:

John C. Bridwell, Director
Division of Asset Management
Office of Administrative Services
1025 Capital Center Drive, Suite 102
Frankfort, KY 40601
Phone: 502-573-0036 ext. 463
Email: john.bridwell@mail.state.ky.us

All communications of a contractual or legal nature are to be made to the Commonwealth Buyer.

Section 40.075--Payment

Payments are predicated upon successful completion and acceptance of the described work, services, supplies, or commodities, and delivery of the required documentation. Invoices for payment shall be submitted to the Agency Contact Person or his representative.

This Contract will be used by schools and libraries participating in the E-rate program (Universal Service Fund), the contractor must participate in this program.

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In order to assure timely payment to the contractor, an acknowledgement and receipt form must be completed by the GOT Wireless Section or Agency Coordinator as soon as practicable after notification of activation by the contractor and provision of equipment to the user agency. Warranty will not begin until the equipment and services are accepted by the user agency.

Section 40.076--Time Period for Payment

Unless otherwise stated in Section 40, in accordance with KRS45.453, the Commonwealth will make payment within thirty (30) working days of receipt of Contractor's invoice or of acceptance of goods and/or services.

Section 40.080--Contractor Cooperation in Related Efforts

The Commonwealth of Kentucky may undertake or award other contracts for additional or related work, services, supplies, or commodities, and the Contractor shall fully cooperate with such other contractors and Commonwealth employees. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Commonwealth employees.

Section 40.085--Subcontractors

No subcontract shall be made by the Contractor with any other party for furnishing any of the work or services herein contracted without written consent of the Commonwealth Buyer. This provision shall not require the approval of contracts of employment between the Contractor and personnel assigned for services thereunder. The Contractor shall be solely responsible for performance of the entire Contract whether or not subcontractors are used.

All references to the Contractor shall be construed to encompass both the Contractor and any subcontractors of the Contractor.

Section 40.090--Contractor Affiliation

If any affiliate (as hereinafter defined) of the Contractor shall take any action which, if done by the Contractor, would constitute a breach of this agreement, the same shall be deemed a breach by such party with like legal effect. "Affiliate" shall mean a branch, division or subsidiary that is effectively controlled by another party.

Section 40.100--Commonwealth Property

The Contractor shall be responsible for the proper custody and care of any Commonwealth-owned property furnished for Contractor's use in connections with the

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performance of this Contract. The Contractor will reimburse the Commonwealth for its loss or damage, normal wear and tear excepted.

Section 40.105--Insurance

The Contractor shall provide professional liability insurance for its professional employees, public liability, property damage, and workers' compensation insurance, insuring as they may appear, the interest of all parties of agreement against any and all claims which may arise out of the Contractor's operations under the terms of this Contract. In the event any carrier of such insurance exercises cancellation, notice of such cancellation shall be made immediately to the Commonwealth Buyer.

Section 40.110--Confidentiality of Contract Terms

The Contractor and the Commonwealth agree that all information communicated between them before the effective date of the Contract shall be received in strict confidence and shall not be necessarily disclosed by the receiving party, its agents, or employees without prior written consent of the other party. Such material will be kept confidential subject to Commonwealth and Federal public information disclosure laws.

Upon signing of the Contract by all Parties, terms of the Contract become available to the public, pursuant to the provisions of the Kentucky Revised Statutes.

The Contractor shall have an appropriate agreement with its Subcontractors extending these confidentiality requirements to all Subcontractors' employees.

Section 40.115--Force Majeure

The Contractor will not be liable for any excess cost to the Commonwealth if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of god, fires, quarantine restriction, strikes, and freight embargoes. In all cases, failure to perform must be beyond the control and without fault or negligence of the Contractor. The Contractor shall take all possible steps to recover from such occurrences and to comply with the requirements of the Contract during such period.

Section 40.120--Hold Harmless

The Contractor agrees to, defend, indemnify, and hold harmless the Commonwealth, its officers, agents, and employees from:

- Any claims or losses resulting from actions by the Contractor, or Subcontractors, their officers, employees, or agents performing or supplying services, materials, or supplies

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in connection with the performance of the Contract;

- Any claims or losses to any person or firm injured or damaged by the erroneous, omissions, or negligent acts of the Contractor or Subcontractors, their officers, employees, or agents in the performance of the Contract;
- Any failure of the contractor or subcontractors, their officers, employees or agents, to observe Kentucky laws, including but not limited to labor laws and minimum wage laws.

Section 40.125--Disclosure of Financial Records

The Contractor, as defined in KRS 45A.030(7), agrees that the Contracting Agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this Contract for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the Contracting Agency, the Finance and Administrative Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the Contract shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(c) prior to the execution of the Contract. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information which would otherwise be subject to public release if a state government agency was providing the service.

Section 40.130--Audit Provisions

The Finance and Administration Cabinet may inspect the place of business of the Contractor or any Subcontractor under the Contract awarded or to be awarded by the Commonwealth.

In accordance with KRS 45A.150, the Finance and Administration Cabinet may audit the books and records of any person who has submitted cost or pricing data under KRS 45A.120 at any time until three (3) years from the date of final payment under the prime Contract, and by any Subcontractor for a period of three (3) years from the date of final payment under the Subcontract. Such books and records shall be maintained by the Contractor for a period of three (3) years from the date of final payment under the Contract and by any Subcontractor for a period of three years from the date of final payment under the Subcontract.

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The Contractor shall place such the same audit requirement in any agreement it may have with a Subcontractor under this Contract.

Section 40.135--Confidential Information

The Contractor shall comply with the provisions of the Privacy Act of 1974 and instruct its employees to use the same degree of care as it uses with its own data to keep confidential information concerning client data, the business of the Commonwealth, its financial affairs, its relations with its citizens and its employees, as well as any other information which may be specifically classified as confidential by the Commonwealth in writing to the Contractor. All Federal and State Regulations and Statutes related to confidentiality shall be applicable to the Contractor. The Contractor shall have an appropriate agreement with its employees to that effect, provided however, that the foregoing will not apply to:

- Information which the Commonwealth has released in writing from being maintained in confidence;
- Information which at the time of disclosure is in the public domain by having been printed and published and available to the public in libraries or other public places where such data is usually collected; or
- Information, which, after disclosure, becomes part of the public domain as defined above, through no act of the Contractor.

The Contractor shall have an appropriate agreement with its Subcontractors extending these confidentiality requirements to all Subcontractors' employees.

Section 40.140--Advertising Award

The Contractor shall not refer to the Award of Contract in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the Commonwealth of Kentucky.

Section 40.145--Notice of Infringement

The Contractor shall report to the Commonwealth promptly and in reasonable written detail, each notice of claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.

Section 40.150--Patent or Copyright Infringement

The Contractor, at its expense, will defend any claim or suit which may be brought against the Commonwealth for the infringement of United States patents or copyrights

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arising from the Contractor's or Commonwealth's use of any equipment, materials, or information prepared or developed in connection with performance of the Contract and in any suit will satisfy any final judgement for such infringement. The Commonwealth will give the Contractor written notice of such claim or suit and full right and opportunity to conduct the defense thereof, together with full information and all reasonable cooperation.

If principles of governmental or public law are involved, the Commonwealth may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of the Contractor without the Contractor's written consent.

If, in the Contractor's opinion, the equipment, materials, or information mentioned in the paragraphs above is likely to or does become the subject of a claim or infringement of a United States patent or copyright, then without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, with the Commonwealth's written consent, substitute other equally suitable equipment, materials, and information, or at the Contractor's options and expense, obtain the right for the Commonwealth to continue the use of such equipment, materials, and information.

Section 40.155--Settlement of Claim

The Commonwealth agrees that the Contractor has the right to defend, or at its option, to settle and the Contractor agrees to defend at its own expense, or at its option to settle, any claim, suit or proceeding brought against the Commonwealth on the issue of infringement of any United States patent or copyright or any product, or any part thereof, supplied by the Contractor to the Commonwealth under this agreement. The Contractor agrees to pay any final judgment entered against the Commonwealth on such issue in any suit or proceeding defended by the Contractor.

The Commonwealth agrees to notify the Contractor promptly, in writing, of any such claim, suit or proceeding, and at the Contractor's expense give the Contractor proper and full information needed to settle and/or defend any such claim, suit or proceeding. If the product, or any part thereof, furnished by the Contractor to the Commonwealth becomes, or in the opinion of the Contractor may become, the subject of any claim, suit or proceeding for infringement of any United States patent or copyright, or in the event of an adjudication that such product or part infringes any United States patent or copyright, or if the use, lease or sale of such product or part is enjoined, the Contractor may, at its option and its expense:

- procure for the Commonwealth the right under such patent, or copyright to use lease or sell, as appropriate, such product or part
- replace such product or part with other products or parts suitable to the

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- suitably modify such product or part

The Contractor shall have no liability for any infringement based upon:

- the combination of such product or part with any other product or part not furnished to the Commonwealth by the Contractor
- the modification of such product or part unless such modification was made by the Contractor
- the use of such product or part in a manner for which it was not designed

Section 40.160--Permits, Licenses, Taxes and Commonwealth Registration

The Contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of all Federal, State, and local governments in which work under this Contract is performed.

The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof. However, the Contractor need not be registered as a prerequisite for responding to the RFP. Additional local registration or license may be required.

Purchases made by the Commonwealth of Kentucky under the contract are not subject to state or federal excise taxes. No exemption certificates are required and none will be issued. Local school taxes will be applied as required. Qualified agencies are **not** exempt from paying Universal Service Fund (USF), CMRS (wireless 911) and Ky Lifeline regulatory fees. The contractor will be required to pay the Unemployment Insurance or Federal Social Security Taxes. Nothing in this RFP is meant to exempt the contractor from the payment of sales tax or use tax required to be paid with respect to its purchase or use of tangible personal property used or transferred in connection with the performance of any construction under the contract.

The Contractor shall pay any sales, use, and personal property taxes arising out of this Contract and the transaction contemplated hereby. Any other taxes levied upon this Contract, the transaction, or the equipment or services delivered pursuant hereto shall be borne by the Contractor.

Section 40.165--Conformance with Commonwealth and Federal Laws/Regulations

This Contract is subject to the laws of the Commonwealth of Kentucky and where applicable Federal law.

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Section 40.170--Contract Claims

The Parties acknowledge that KRS 45A.225 to 45A.290 govern contract claims.

A question or act arising under the Contract which is not disposed of by agreement may be brought to the Secretary of the Finance and Administration Cabinet pursuant to KRS 45A.230.

Pursuant to KRS 45A.245 and 45A.260 (2), actions on the Contract shall be brought in Franklin Circuit Court, Frankfort, Kentucky within one year from the date of completion specified in the Contract, notwithstanding the requirement to present Contract claims to the Secretary of the Finance and Administration Cabinet for administrative review. Damages shall be limited to the original amount of the Contract.

Pending final determination of any dispute or legal action, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Secretary of the Finance and Administration Cabinet's direction.

Section 40.175--Rights and Remedies

The rights and remedies of the Commonwealth provided in Section 40 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract

Section 40.180--Forums and Venue

This Contract shall be construed according to the laws of the Commonwealth of Kentucky. Any legal proceedings against the Commonwealth regarding this Contract shall be brought in Commonwealth of Kentucky administrative or judicial forums. Venue will be in Franklin County, Commonwealth of Kentucky.

Section 40.185--Attorneys' Fees

In the event that either Party deems it necessary to take legal action to enforce any provision of this Contract, and in the event the Commonwealth prevails, the Contractor agrees to pay all expenses of such action, including attorneys' fees and costs at all stages of litigation as set by the court or hearing officer.

Section 40.200--Employment Practices

The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age (except as provided by law),

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marital status, political affiliations, or handicap. The Contractor must take affirmative action to ensure that employees, as well as applicants for employment, are treated without discrimination because of their race, color, religion, sex, national origin, age, (except as provided by law), marital status, political affiliation, or handicap. Such action shall include, but is not limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this clause.

The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age, (except as provided by law), marital status, political affiliation, or handicap, except where it relates to a bona fide occupational qualification.

The Contractor shall comply with the nondiscrimination clause contained in Federal Executive Order 11246, as amended by Federal Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex, or national origin, and the implementation rules and regulations prescribed by the Secretary of Labor and with Title 41, Code of Federal Regulations, Chapter 60. The Contractor shall comply with related Commonwealth laws and regulations.

The Contractor shall comply with regulations issued by the Secretary of Labor of the United States in Title 20, Code of Federal Regulations, Part 741, pursuant to the provisions of Executive Order 11758 and the Federal Rehabilitation Act of 1973.

The Contractor shall comply with the Civil Rights Act of 1964, and any amendments thereto, and the rules and regulations thereunder, and Section 504 of Title V of the Vocational Rehabilitation Act of 1973 as amended and the Kentucky Civil Rights Act.

Section 40.210--Contracts Involving Federal Funds in Excess of \$10,000

This section applies only to contracts utilizing federal funds, in whole or in part, in excess of \$10,000.

During the performance of this Contract, the Contractor agrees as follows:

The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex or age. The Contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable Federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The

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Contractor agrees to provide, upon request, needed reasonable accommodations. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, age or disability.

The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the secretary of labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

The Contractor will include the provisions of paragraphs (1) through (7) of Section 202 of Executive Order No. 11246 in every subcontract or purchase order unless exempted

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by rules, regulations or orders of the Secretary of Labor, issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Section 40.220--Kentucky Equal Employment Opportunity Act

The Contractor shall comply with the provisions of KRS 45.550-KRS 45.640.

Section 40.230--Contents of Contract

Pursuant to KRS 45.570, the Contractor agrees to the following:

- (a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin;
- (b) The Contractor will take affirmative action in regard to employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, so as to ensure that applicants are employed and that employees during employment are treated without regard to their race, color, religion, sex, age, or national origin; however, when layoffs occur, employees shall be laid off according to seniority with the youngest employee being laid off first. When employees are recalled, this shall be done in the reverse of the way the employees were laid off;
- (c) The Contractor will state in all solicitations or advertisements for employees placed by or on behalf of the contractor that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin;
- (d) The Contractor will post notices in conspicuous places, available to employees and applicants for employment, setting forth the provisions of the nondiscrimination clauses required by this section; and
- (e) The Contractor will send a notice to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding advising the labor union or workers' representative of the contractor's commitments under the nondiscrimination clauses.

Section 40.240--Failure to Comply with KRS 45.570

Pursuant to KRS 45.580:

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Failure to comply with any of the provisions of KRS 45.570 shall constitute a material breach of this Contract.

Section 40.250--Reporting Compliance or Breach

Failure to comply with the goals and timetables set forth in the affirmative action plan described in KRS 45.600 shall be an unlawful practice under KRS 45.560 to 45.640 and shall constitute a material breach of the Contract.

Section 40.260--Hiring Minorities

Pursuant to KRS 45.610:

The Contractor shall hire minorities from other sources within the drawing area, should the union with which he has collective bargaining agreements be unwilling to supply sufficient minorities to satisfy the agreed upon goals and timetables described in the affirmative action plan.

The Contractor shall furnish such information as required by KRS 45.560 to 45.640 and by such rules, regulations, and orders issued pursuant thereto and will permit access to all books and records pertaining to his employment practices and work sites by the Contracting Agency and the Cabinet for purposes of investigation to ascertain compliance with KRS 45.560 to 45.640 and such rules, regulations, and orders issued pursuant thereto.

Section 40.270--Action Against the Contractor

Pursuant to KRS 45.620:

(1) If the Contractor is found by the Finance and Administration Cabinet to have engaged in an unlawful practice KRS 45.560 to 45.640 during the course of performing under the Contract or subcontract covered under KRS 45.560 to 45.640, the Cabinet shall so certify and such certification shall be binding unless it is reversed in the course of judicial review.

(2) If the Contractor is found to have committed an unlawful practice under KRS 45.560 to 45.640 by the Finance and Administration Cabinet, the Commonwealth may cancel or terminate the Contract, conditioned upon a program for future compliance approved by the Finance and Administration Cabinet. The Finance and Administration Cabinet may declare the Contractor ineligible to bid on further contracts with that agency until such time as the Contractor complies in full with the requirements of KRS 45.560 to 45.640.

(3) The equal employment provisions of KRS 45.560 to 45.640 may be met in part by the Contractor by subcontracting to a minority contractor or subcontractor. For the provisions of KRS 45.560 to 45.640, a minority contractor or subcontractor shall mean a

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business that is owned and controlled by one (1) or more persons disadvantaged by racial or ethnic circumstances.

Section 40.300--Provisions for Termination of the Contract

This Contract shall be subject to the termination provisions set forth in this Section.

Section 40.310--Termination for Unavailability of Funds

In the event that the Commonwealth funds for the Contract become unavailable, the Commonwealth shall have the right to terminate the Contract without penalty and upon the same terms and conditions as a termination for convenience.

Availability of funds will be determined at the sole discretion of the Commonwealth.

Section 40.320--Termination for Default

KRS 45A.210 (2) and 200 KAR 5:312 Section 1 set out the provisions for termination of the contract upon default:

If the Contractor is determined in writing by the Finance and Administration Cabinet to be in breach of any of the terms and conditions of the Contract, the Contractor, shall, at the discretion of the Finance and Administration Cabinet, be declared in default and the Contract may be terminated as a result of such default.

A default in performance by which the Contract may be terminated shall include, but shall not be limited to, failure to perform the Contract according to its terms, conditions and specifications; failure to make delivery within the time specified or according to a delivery schedule fixed by the Contract; late payment or nonpayment of bills for labor, materials, supplies, or equipment furnished in connection with the Contract as evidenced by a lien filed pursuant to the provisions of KRS Chapter 376, or letters of indebtedness received from creditors by the Commonwealth.

The Commonwealth shall not be liable for any further payment to the Contractor if the Contractor is terminated for default after the date of such default as determined by the Finance and Administration Cabinet. The Commonwealth shall be responsible for commodities, supplies, equipment or services delivered and accepted on or before the date of default and for which payment had not been made as of that date. The Contractor and his surety, if a performance or payment bond has been required under the Contract, shall be jointly and severally liable to the Commonwealth for all loss, cost or damage sustained by the Commonwealth as a result of the Contractor's default; provided, however, that the Contractor's surety liability shall not exceed the final sum specified in the Contractor's bond.

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Section 40.330--Cure Provision

In reference to Termination for Default, the Commonwealth shall notify the Contractor in writing at least 30 days prior to the proposed termination date of the default. Such written notice shall specifically state the reason of the intention to terminate. The Contractor shall have 30 days in which to cure the default, unless such cure period is extended by agreement of the Parties. If the default is not cured to the satisfaction of the Commonwealth within the 30 day cure period or any extension thereof, the Contract shall be considered terminated at close of business on the 30th day or any agreed upon extension.

Section 40.340--Termination for Convenience

KRS 45A.210 (2) and 200 KAR 5:312 Section 2 set out the provisions for termination of the Contract for convenience:

The Commonwealth may terminate the Contract for its own convenience upon thirty (30) days prior written notice when the Finance and Administration Cabinet has determined that such terminations will be in the Commonwealth's best interests. When it has been determined that the Contract should be terminated for the convenience of the Commonwealth, the Commonwealth shall negotiate a settlement with the Contractor according to terms deemed just and equitable by the Commonwealth. Compensation to the Contractor for lost profits on the Contract terminated for convenience of the Commonwealth shall not exceed an amount proportionate to the sum that the Contractor's total expected margin of profit on the Contract bore to the Contract price, based on the total out of pocket expense incurred by the Contractor as of the date of termination of the Contract. If the Contract is terminated for the convenience of the Commonwealth, the Contractor shall have the burden of establishing the amount of compensation to which he believes himself to be entitled by submission of complete and accurate cost data employed in submitting his proposal for the Contract and evidence of expenses paid or incurred in performance of the Contract from the date of award through the date of termination."

Section 40.350--Procedure for Termination

Upon delivery by certified mail to the Contractor of a Notice of Termination specifying the nature of the termination, the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective, the Contractor shall:

- Stop work under the Contract on the date and to the extent specified in the Notice of Termination

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- Terminate all orders to the extent that they relate to the performance of work terminated by the Notice of Termination
- Assign to the Commonwealth in the manner and to the extent directed by the Commonwealth Buyer all of the right, title, and interest of the Contractor under the orders so terminated, in which case the Commonwealth shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders
- With the approval or ratification of the Commonwealth Buyer, settle all outstanding liabilities and all claims arising out of such termination of orders, the cost of which would be reimbursable in whole or in part, in accordance with the provision of the Contract

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item of reimbursable price under this clause.

Section 40.360--Termination Claims

After receipt of a Notice of Termination, the Contractor shall submit to the Commonwealth Buyer any termination claim in the form and with the certification prescribed by the Commonwealth Buyer. Such claim shall be submitted promptly but in no event later than six (6) months from the effective date of termination, unless one or more extensions in writing are granted by the Commonwealth Buyer within such six (6) month period or authorized extension thereof. However, if the Commonwealth Buyer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such six- (6) month period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Commonwealth Buyer may, subject to any review required by the Commonwealth procedures in effect as of the date of execution of the contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon cause to be paid to the Contractor the amount so determined.

Subject to the provisions of the previous paragraph and subject to any review required by the Commonwealth procedures in effect as of the date of execution of the contract, the Contractor and the Commonwealth may agree upon the amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this article. The Contract shall be amended accordingly.

In the event of the failure of the Contractor and the Commonwealth to agree in whole or in part as to the amounts with respect to costs to be paid to the Contractor in connection with the total or partial termination of work pursuant to this article, the Commonwealth

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shall determine on the basis of information available the amount, if any, due to the Contractor by reason of termination and shall pay to the Contractor the amount so determined.

The Contractor shall have the right of appeal, as stated in **Section 40.170--Contract Claims**, from any such determination made by the Commonwealth.

Section 40.370--Bankruptcy

In the event the Contractor becomes the subject debtor in a case pending under the Federal Bankruptcy Code, the Commonwealth's right to terminate this Contract may be subject to the rights of a trustee in bankruptcy to assume or assign this Contract. The trustee shall not have the right to assume or assign this Contract unless the trustee (a) promptly cures all defaults under this Contract; (b) promptly compensates the Commonwealth for the monetary damages incurred as a result of such default, and (c) provides adequate assurance of future performance, as determined by the Commonwealth.

END OF SECTION 40